LIBRARY
SUPREME COURT, U. S.



Office-Supreme Court, U.S.
FILED
NOV 15 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

NO. 741

FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA,

Appellant,

vs.

THE FIRST NATIONAL BANK OF HOMESTEAD, HOMESTEAD, FLORIDA
and
OKALOOSA NATIONAL BANK AT NICEVILLE, NICEVILLE, FLORIDA

Appellees.

JURISDICTIONAL STATEMENT OF APPELLANT

EARL FAIRCLOTH
Attorney General

FRED M. BURNS
Assistant Attorney General

LARRY LEVY
Assistant Attorney General
The Capitol
Tallahassee, Florida

TABLE OF CONTENTS

	Page
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	2
STATEMENT OF JURISDICTION	2
QUESTIONS PRESENTED	5
STATEMENT OF THE CASE	6
POINTS INVOLVED	8
POINT I FEDERAL LAW DOES NOT PROHIBIT THE STATE OF FLORIDA FROM IMPOSING ITS DOCUMENTARY STAMP TAX ON *SHARES OF STOCK* AND *CAPITAL DEBENTURES ISSUED* BY NATIONAL BANKS	8
POINT II FEDERAL LAW DOES NOT PROHIBIT THE STATE OF FLORIDA FROM IMPOSING ITS DOCUMENTARY STAMP TAX ON NOTES, MORTGAGES, OR OTHER EVIDENCES OF DEBT *HELD* BY NATIONAL BANKS	8, 12
CONCLUSION	18
PROOF OF SERVICE	19

TABLE OF CITATIONS

Page

Federal Land Bank v. Crosland
261 US 374, 67 L. Ed 703,
43 S.Ct. 385, 29 A.L.R. 1 15

First Agricultural National Bank of Berkshire County
v. State Tax Commission
—US—20 L.Ed 1138, 88 S.Ct. 7

Florida Lime & Avocado Growers, Inc. v. Jacobsen
Cal. 1960, 80 S.Ct. 568, 362 U.S. 73,
4 L. Ed.2d 568 3

Laurens F.S. & L. v. South Carolina Tax Com.
365 US 517, 5 L.Ed.2d 749, 81 S.Ct. 719 17

Pittman v. Home Owners' Loan Corp.
308 U.S. 20, 84 L.Ed. 11 14

Radio Corp. of America v. United States
D.C. Ill. 1950, 95 F.Supp. 660,
affirmed 71 S.Ct. 806, 341 U.S. 412,
95 L.Ed. 1062 3

United States v. Detroit
355 U.S. 466, 2 L.Ed.2d 424,
78 S.Ct. 474 12

OTHER CITATIONS

	Page
Chapter 201, Florida Statutes	12
Section 201.01, Florida Statutes	4, 12, 13
Section 201.04, Florida Statutes	5
Section 201.05, Florida Statutes	4, 5, 11
12 U.S.C. Section 548	9, 11
28 U.S.C.A. Section 1253	2, 7, 8
28 U.S.C. 2201 & 2202	6
Article IX, Section 11, Florida Constitution	11

IN THE

Supreme Court of the United States

NO.

FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA,

Appellant,

vs.

THE FIRST NATIONAL BANK OF HOMESTEAD, HOMESTEAD, FLORIDA

and

OKALOOSA NATIONAL BANK AT NICEVILLE, NICEVILLE, FLORIDA

Appellees.

JURISDICTIONAL STATEMENT OF APPELLANT

PRELIMINARY STATEMENT

The Appellant, FRED O. DICKENSON, JR., Comptroller of the State of Florida, will be referred to herein as the Comptroller. The Appellees, THE FIRST NATIONAL BANK OF HOMESTEAD, FLORIDA and OKALOOSA NATIONAL BANK AT NICEVILLE, FLORIDA, will be referred to as the Banks. Defendants in the Court below, THE FLORIDA REVENUE COMMISSION and J. ED STRAUGHN, DIRECTOR OF REVENUE OF THE STATE OF FLORIDA, are not parties in this appeal.

The opinion of the Court below is as yet unreported, so far as the Comptroller has been able to ascertain.

STATEMENT OF JURISDICTION

This appeal is taken from the Order of a 3-Judge Federal Court pursuant to 28 U.S.C.A. §1253.

The date of the entry of the Order, Judgment, or decree appealed from is August 19, 1968.

The Comptroller's Notice of Appeal was filed on September 17, 1968.

We feel that jurisdiction is conferred on the Supreme Court by 28 U.S.C.A. §1253, which provides:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting

> or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 928."

The Order of the 3-Judge Federal Court provides in part:

> ". . . It is therefore ORDERED that the defendants jointly and severally are restrained and enjoined from levying, assessing or collecting (a) sales and use taxes levied on goods, services and rentals purchased by plaintiffs, (b) intangible personal property taxes on mortgages owned and recorded by plaintiffs, (c) documentary stamp taxes on notes, mortgages, or other evidences of debt *held by plaintiffs,* and on shares of stock and capital debentures *issued by plaintiffs.* . . ." (emphasis supplied)

Thus the lower Court's Order is an order *enjoining* the Comptroller and other defendants from collection of the taxes on the documents, intangibles, and transactions as set forth therein. Therefore, jurisdiction for this appeal rests in the United States Supreme Court.

Also see the cases of *Florida Lime & Avocado Growers, Inc. v. Jacobsen,* Cal. 1960, 80 S.Ct. 568, 362 U.S. 73, 4 L.Ed. 2d 568, and *Radio Corp. of America v. U.S.,* D.C. Ill. 1950, 95 F.Supp. 660, affirmed 71 S.Ct. 806, 341 U.S. 412, 95 L.Ed. 1062.

The State Statutes involved are Section 201.01, Florida Statutes, and Section 201.05, Florida Statutes. These are found in Volume 1, Florida Statutes, 1967 at pages 848 and 849, respectively. Pursuant to Rule 15, Supreme Court Rules, they are each set forth below:

"201.01 Documents taxable, generally.—There shall be levied, collected and paid the taxes specified in this chapter, for and in respect to the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things described in the following sections, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, are written or printed *by any person, who makes, signs, executes, issues, sells, removes, consigns,* assigns, or ships the same, *or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the state.* Provided further that the documentary stamp taxes required under this chapter shall be affixed to and placed on all recordable instruments, requiring documentary stamps according to law, prior to recordation. On mortgages where the stamps are on the notes, a notation shall be made on the mortgage that the proper stamps and the amount of same have been placed on the notes.

"201.05 Tax on stock certificates.—On each original issue, whether organization or reorganization, of cer-

tificates of stock or shares however designated *issued in the state,* or certificates of profits, or of interest in property or accumulations, *by any corporation or by any joint stock company or other association* as set forth in §201.04, on each one hundred dollars of face value, or fraction thereof, the tax shall be fifteen cents; provided, that where a certificate is issued without face value, the tax shall be fifteen cents on each one hundred dollars of actual value or fraction thereof. The stamps representing the tax imposed by this section shall be attached to the stock books, and not to the certificates issued." (Emphasis supplied)

Since Section 201.04, Florida Statutes, is referred to in Section 201.05, Florida Statutes, it, being somewhat lengthy, is set forth in the Appendix attached hereto. (A–1)

QUESTIONS PRESENTED

1. MAY THE STATE OF FLORIDA IMPOSE DOCUMENTARY STAMP TAXES ON NOTES, MORTGAGES, OR OTHER EVIDENCES OF DEBT *HELD* BY PLAINTIFFS AND ON SHARES OF STOCK AND CAPITAL DEBENTURES *ISSUED* BY PLAINTIFFS?

2. WAS THE THREE-JUDGE FEDERAL COURT CORRECT, IN *RESTRAINING* AND *ENJOINING* THE DEFENDANT, FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA,

FROM LEVYING, ASSESSING, OR COLLECTING DOCUMENTARY STAMP TAXES ON NOTES, MORTGAGES, OR OTHER EVIDENCES OF DEBT *HELD* BY PLAINTIFFS AND ON SHARES OF STOCK AND CAPITAL DEBENTURES *ISSUED* BY PLAINTIFFS?

STATEMENT OF THE CASE

This appeal is taken from a decision entered by a 3-Judge Federal Court in the Northern District of the State of Florida, Tallahassee Division. This 3-Judge Federal tribunal entered its Order found herein in the Appendix. (A–2)

The Plaintiff national banks filed a complaint seeking a declaratory judgment and an injunction pursuant to 28 U.S.C. 2201 and 2202, and other applicable law. The three Defendants responded with a motion to dismiss. One of the original Plaintiffs, Greater Miami Clearing Association, Miami, Florida, moved to voluntarily dismiss itself from the action. This motion was granted by the Court. After the Plaintiffs had filed certain motions to strike, both moved for a summary judgment.

The Court responded by entering its attached order and enjoining the named Defendants from the collection of the taxes as set forth in the order.

The order of the 3-Judge Federal Court provides in part:

". . . It is therefore ORDERED that the defendants jointly and severally are restrained and enjoined from levying, assessing or collecting (a) sales and use taxes levied on goods, services and rentals purchased by plaintiffs, (b) intangible personal property taxes on mortgages owned and recorded by plaintiffs, (c) documentary stamp taxes on notes, mortgages, or other evidences of debt *held by plaintiffs*, and on shares of stock and capital debentures *issued by plaintiffs*. . . " (emphasis supplied)

This appeal was then timely taken pursuant to the provisions of 28 U.S.C.A. Section 1253.

The effect of the lower Court's decision was to find that the previously set forth provisions of the Florida Statutes was void and inoperative insofar as they were applicable to national banks by virtue of the supremacy clause of the Federal Constitution. The lower Court bottomed its decision on the conclusion that national banks are Federal instrumentalities, and the case of *First Agricultural National Bank of Berkshire County v. State Tax Commission*, ____ U.S. ____, 20 L.Ed.2d 1138, 88 S.Ct. ____.

Our position is that the decision of the lower Court is inconsistent with previous Federal decisions and Federal law.

We will discuss the questions presented under the following two points:

POINT I

FEDERAL LAW DOES NOT PROHIBIT THE STATE OF FLORIDA FROM IMPOSING ITS DOCUMENTARY STAMP TAX ON *SHARES OF STOCK* AND *CAPITAL DEBENTURES ISSUED* BY NATIONAL BANKS.

POINT II

FEDERAL LAW DOES NOT PROHIBIT THE STATE OF FLORIDA FROM IMPOSING ITS DOCUMENTARY STAMP TAX ON NOTES, MORTGAGES, OR OTHER EVIDENCES OF DEBT *HELD* BY NATIONAL BANKS.

Each of these two points will be considered in order.

POINT I

FEDERAL LAW DOES NOT PROHIBIT THE STATE OF FLORIDA FROM IMPOSING ITS DOCUMENTARY STAMP TAX ON *SHARES OF STOCKS* AND *CAPITAL DEBENTURES ISSUED* BY NATIONAL BANKS.

In the First Agricultural National Bank case, supra, the Supreme Court of the United States bottomed its decision on 12 U.S.C. §548. It stated:

". . . For purposes of this case, the most important piece of banking legislation is 12 U.S.C. § 548[3] which originated as part of the Act of June 3, 1864, c. 106, § 41, 13 Stat. 111. *This section allows state taxation of national banks in any one of four specified ways in addition to taxes on their real estate.* . . ." (emphasis supplied)

Section 548, provides in part:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. *The several States may* (1) *tax said shares, or* (2) *include* dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds,

notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section. . .

2. The shares of any national banking association owned by nonresidents of any State shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. R.S. § 5219; Mar. 4, 1923, c. 267, 42 Stat. 1499; Mar. 25, 1926, c. 88, 44 Stat. 223." (emphasis supplied)

Thus there is positive congressional authority allowing the states to tax the shares of stock *issued* by national banks.

The State of Florida by constitutional mandate does *not* have an income tax. (See Article 9 Section 11 of the Florida Constitution (A-5)). Therefore, the State of Florida is without power to enforce a tax on any of that which is included in (2), (3), or (4) as listed in Section 548. The only tax which the State of Florida could impose pursuant to said section would be the tax on the shares of stock issued by the national banks. This is *expressly authorized* by Federal law. This is imposed uniformly on all banks within the State of Florida at the same identical rate as set forth previously herein in Section 201.05, Florida Statutes.

Therefore, the decision of the lower Court is inconsistent with paramount Federal law— to wit, Title 12, U.S.C.A., Section 548 and the First Agricultural National Bank case, supra. Therefore, we respectfully request that the Supreme Court of the United States take jurisdiction of this case. Therefore since the decision of the lower Court is clearly inconsistent with paramount Federal law and paramount United States Supreme Court decisions, the questions presented are so substantial as to require plenary consideration with briefs on the merits and oral argument for their further resolution. For the same reason the lower Court is in error in granting its permanent injunction against the Comptroller and should be reversed. The effect of the lower Court's decision is to *disallow* a state tax to which the state would otherwise be entitled. This tax is allowed by Federal law and Federal decisions construing said Federal law.

POINT II

FEDERAL LAW DOES NOT PROHIBIT THE STATE OF FLORIDA FROM IMPOSING ITS DOCUMENTARY STAMP TAX ON NOTES, MORTGAGES, OR OTHER EVIDENCES OF DEBT *HELD* BY NATIONAL BANKS.

Our position is that national banks are *not* immune from the State of Florida's documentary stamp taxes imposed pursuant to Section 201.01, Florida Statutes, on the various instruments set forth in Chapter 201, Florida Statutes. Our position is that the lower Court's ruling on this point is *inconsistent* with paramount Federal law and previous Federal judicial decisions.

In the case of United States v. Detroit, 355 US 466, 2 L Ed 2d 424, 78 S. Ct 474, the Court stated:

> "This Court has held that a State cannot constitutionally levy a tax directly against the Government of the United States or its property without the consent of Congress. M'Culloch v Maryland (US) 4 Wheat 316, 4 L ed 579; Van Brocklin v. Tennessee, 117 US 151, 29 L ed 845, 6 S Ct 670. *At the same time it is well settled that the Government's constitutional immunity does not shield private parties with whom it does business from state taxes imposed on them merely because part or all of the financial burden of the tax eventually falls on the Government. . .*" (emphasis supplied)

Further therein the Court stated:

> ". . . Today the United States does business with a vast number of private parties. In this Court the *trend has been to reject immunizing these private* parties from *nondiscriminating state taxes as a matter* of constitutional law. Cf. Penn-Dairies v Milk Control Commission, 318 US 261, 270, 87 L ed 748, 753, 63 S Ct 617. Of course this is not to say that Congress, acting within the proper scope of its power, *cannot confer immunity by statute* where it does not exist constitutionally. Wise and flexible adjustment of intergovermental tax immunity calls for political and economic considerations of the greatest difficulty and delicacy. *Such complex problems are ones which Congress is best quqlified to resolve.* As the Government points out Congress has already extensively legislated in this area by permitting States to tax what would have otherwise been immune.
>
> To hold that the tax imposed here on a private business violates the Government's constitutional tax immunity would improperly impair the taxing power of the State." (emphasis supplied)

Section 201.01, Florida Statutes, imposes the tax on any ". . . person, who makes, signs, executes, issues, sells, removes, consigns, assigns, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the state. . ." Thus, it is imposed on both the maker of the

note, mortgage or evidence of debt and the person for whose benefit the note, mortgage, etc., is made. These are *private persons doing business* with the national bank *not* the national bank itself.

The Detroit case, supra, clearly found this to be *unobjectional* so long as it was nondiscriminatory. There is nothing in this record which would even *suggest* that this tax is imposed in a discriminatory manner. In point of fact, the taxes are imposed identically and uniformly on all lenders and borrowers whether national banks, state banks or otherwise.

Therefore, the decision of the lower Court is *inconsistent* with the previous pronouncement of the United States Supreme Court.

In the Detroit case, supra, the Court pointed out that *Congress* could *confer immunity on private persons by statute.* However, we have found *no* Federal statute dealing with national banks which has *conferred* tax immunity on private persons doing business with national banks.

We recognize that Section 548, previously set forth herein, deals with taxation of certain properties. However, it is our view that said section is related solely to *direct* taxation not *indirect.*

This view is consistent with the case of *Pittman v. Home Owners' Loan Corp.*, 308 US 20, 84 L Ed 11. That case too involved the imposition of a documentary stamp tax. That case held that the mortgage offered for recordation

by Home Owners' Loan Corp. of Washington, D. C., was *not* subject to the documentary stamp tax of the State of Maryland. However, it does so by utilizing and construing an express constitutional enactment *granting* the immunity. Therein the Court stated:

> ". . .The second suggested distinction rests upon the terms of the Home Owners' Loan Act. That provides[3] that the Home Owners' Loan Corporation, its franchise, capital, reserves and surplus, and its loans and income shall be exempt from all state or municipal taxes. The critical term, in the present relation, is '*loans*.' We think that this term, in order to carry out the manifest purpose of the broad exemption, should be construed as covering the entire process of lending, the debts which result therefrom and the mortgages given to the Corporation as security. The Home Owners' Loan Act requires that the loans made by the Corporation 'shall be secured by a duly recorded home mortgage.'[4] Both the mortgage and its recordation were indispensable elements in the lending operations authorized by Congress. We agree with the state court that there is no sound distinction which makes inapplicable the reasoning which was decisive in the Crosland Case. . . ."

In the case of *Federal Land Bank v. Crosland,* 261 US 374, 67 L Ed 703, 43 S. Ct. 385, 29 A.L.R. 1, there was also an express congressional enactment *granting* or *conferring* the immunity. In discussing the Crosland case, supra, the Court in the Pittman case, supra, stated:

". . . The court relied upon our decision in Federal Land Bank v. Crosland, 261 US 374, 67 L ed 703, 43 S Ct 385, 29 ALR 1. The question there related to a tax imposed by Alabama as a condition for the recording of a mortgage executed to a Federal Land Bank. The Federal Farm Loan Act of [July 17] 1916 provides that first mortgages executed to Federal Land Banks shall be deemed '*instrumentalities of the Government of the United States*, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.' 39 Stat. at L. 360, 380, chap. 245, 12 USCA § 931. . ." (emphasis supplied)

Thus in both of these cases there was a congressional *enactment conferring* the immunity.

There is *no* such Federal congressional enactment *conferring* the immunity in the instant case.

We do not doubt or question but that Congress could *confer* such immunity on the notes, mortgages, loans, evidences of debt, advances and etc., of national banks. But it has not done so. It might be argued that the Home Owners' Loan Corp. in the Pittman case, supra, was not a Federal instrumentality while a national bank is. As to this we quote from the Court in the Pittman case, supra:

". . .The Home Owners' Loan Corporation is expressly declared to be an instrumentality of the United States (Home Owners' Loan Act of [June 13] 1933, chap.

> 64, 48 Stat. at L. 128, 12 USCA § 1461) and the mortgage was acquired in that capacity. . . . (emphasis supplied)

Thus, since both were Federal instrumentalities the same rule is applicable to both, the rule being that unless Congress has expressly conferred such immunity it does not exist. This is the rule as regarding *indirect* taxation. This is the rule as it relates to private persons doing business with Federal instrumentalities. (This does not mean that we approve of the view that national banks are Federal instrumentalities.)

The Pittman case, supra, was relied on by the United States Supreme Court in the case of *Laurens F. S. & L. v. South Carolina Tax Com.*, 365 US 517, 5 L Ed. 2d 749, 81 S. Ct. 719. This case too involved a congressional enactment which exempted the loans of the Home Owners' Loan Corp. The Court construed the term "loans" as covering the entire process of lending, the debts which result therefrom and the mortgages given as security.

Thus in all three of these cases there was a positive congressional enactment *conferring* the immunity.

There is no such congressional enactment *conferring* immunity on the mortgages, notes, loans, advances, or other evidences of indebtedness of national banks. Thus since there is no enactment conferring such immunity no immunity could exist.

Therefore, the lower Court's decision is inconsistent with previous United States Supreme Court judicial pronouncements. Therefore, the lower Court should be reversed.

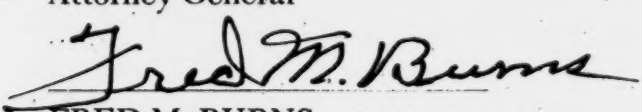
CONCLUSION

It is our view that the decision reached by the 3-Judge Federal Court below is inconsistent with prior Federal judicial pronouncements, and is inconsistent with paramount Federal statutory law. We asked that this Court take jurisdiction of this case and grant oral argument therein.

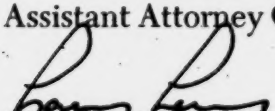
Respectfully submitted,



EARL FAIRCLOTH
Attorney General



FRED M. BURNS
Assistant Attorney General



LARRY LEVY
Assistant Attorney General

PROOF OF SERVICE

I, Fred M. Burns, one of the attorneys for Fred O. Dickinson, Jr., Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 14th day of November, 1968, I served copies of the foregoing Jurisdiction Statement of Appellant on the several parties thereto, as follows:

1. On The First National Bank of Homestead, Homestead, Florida and Okaloosa National Bank at Niceville, Niceville, Florida, by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record, as follows:

TO: O. Ralph Matousek, Esq., Attorney for the First National Bank of Homestead, Homestead, Florida, 234 North Krome Avenue, Homestead, Florida 33030

TO: James E. Moore, Esq., Attorney for Okaloosa National Bank at Niceville, Niceville, Florida Post Office Box 476, Niceville, Florida

FRED M. BURNS
ATTORNEY FOR FRED O. DICKINSON, Jr.

Fred M. Burns

FRED M. BURNS
Office of the Attorney General
The CAPITOL
Tallahassee, Florida 32304